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Sunday, August 04, 2013

Political relationships

In most political theories and ideologies, there is a preposterous oversimplification about what kinds of political relationships are desirable, common, or even possible. Given the irreduceable complexity of society, any summary of real-world political relationships is by necessity going to be greatly oversimplified, but most such movements neglect even very broad and common kinds of political relationships. So herein, based on my extensive study of the legal relationships between political players that have existed in a very wide variety of polities, is a classification scheme:

Let's define a "polity" as any entity with some coercive powers. Polities can range in scale from the United Nations to the jail cell at the back of your local shopping mall. By studying polities over many years, and borrowing from previous work on law and political science, I have identified three basic kinds of legal relationships between polities. The basic legal structure, or constitution, of a polity can also be characterized by how much and in what ways it is composed of each kind of relationship. The three basic kinds of political relationships are:

(1) Delegation: This includes any kind of delegation from a principal to an agent. The principal authorizes the agent to act for him, e.g. by making a contract or treaty with a third party to which the principal will be bound. A principal can be a boss, a contractee, or voter; the corresponding agents being employee, contractor, or representative. We can characterize principal/agent relationships by representation distance, with each extreme common:

(A) at a very short representation distance is the master/servant (in modern parlance, employer/employee) relationship. The master gives orders to the servant who is delegated to carry them out and closely supervised. A military dictatorship, for example the Roman Empire, is or was dominated by commander-subordinate relationships. In such a system, to paraphrase the legal code compiled for the Emperor Justinian, the emperor's will is law.

(B) at the other extreme, an extremely long representation distance, is the relationship between millions of voters and the representatives they vote for in most modern governments. Voters do not give orders, but rather are treated as having delegated most their coercive powers to their representatives. Representatives in modern governments usually further delegate political and legal power to unelected bureaucracies themselves dominated by type A (boss/employee) relationships.

(2) Subsidiarity: for example the relationship in the United States between counties and states, or between the states and the federal government. Often these combine supremacy clauses (when in conflict the law of the encompassing jurisdiction trumps that of its subsidiaries) with typically enumerated powers (the subject matters of the encompassing power is typically limited relative to that of

About Me

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"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

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"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

the subsidiary). We can characterize subsidiarity relationships by how much and what kinds of coercive power can be exercised by the encompassing jurisdiction.

In medieval England, the subject matter of the encompassing jurisdiction was very small, the Crown essentially having jurisdiction only regarding procedural laws for interactions between subsidiarity jurisdictions (which like the encompassing Crown were held as property by individuals or corporations), as well as some war-making powers. Substantive law was almost entirely in the hands of the encompassed jurisdictions, including the specialized merchant courts as peers enforced an international standard of business law, the *lex mercatoria*.

By contrast in the modern U.S., the substantive legal jurisdiction of the encompassing power has become vast in scope. Nevertheless one can still find many examples of fine-grained subsidiarity, down to "stand your ground" laws, citizen's arrest, and those shopping mall jail cells.

In property law (which once was also procedural law and essential to defining political relationships), the landlord/tenant relationship is a subsidiarity relationship. The landlord is generally not the master of the tenant, and cannot issue the tenant arbitrary commands, but rather their relationship is governed on both sides by the constraints imposed by the tenancy.

(3) Peer-to-peer: these include any agreements made between polities where neither is a subsidiary of the other, or a standard law arrived at in parallel, either through parallel development of precedent (as in the *lex mercatoria* and many other bodies of law) or codification of a standard law (e.g. the Uniform Commercial Code, which is not federal or national law, but a standard set of laws separately enacted by 50 separate jurisdictions, the states of the United States, as peers). Peer-to-peer relationships most commonly involve maintaining distinct sets of laws adapted to local conditions along with agreements or mutually evolved practices for resolving conflicts of laws. Conflict-of-laws law itself was primarily developed through parallel development of judicial precedent, through courts respecting each other in order to maintain their reputations for enforcing the rule of law. On a larger scale wars and treaties between nations are peer-to-peer relationships. In medieval Italy, a wide variety city-states that were often at war with each other nevertheless also developed through this process most of the body of modern conflict-of-laws law.

Since political theory developed in universities out of the study of Roman imperial law, it has been dominated by imputing to polities only one of the above kinds of relationships -- namely master/servant or commander/subordinate relationships, or at best delegation in general. This is especially apparent in the quixotic search for a "locus of sovereignty", a search that typically amounts to conspiracy theory in search of a hidden commander-of-all when in fact far more sophisticated combinations of the above kinds of relationships are at play.

For further reading:
Conflict-of-laws law
Substantive vs. procedural law
Jurisdiction as property (subsidiarity and peer-to-peer relationships via property law)
Representation distance
Liberty of house (common law origins of stand-your-ground laws)

Posted by Nick Szabo at 6:50 PM

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3 comments:

James said...

A possible complementary hypothesis to explain the popularity of analysis in terms of delegation, at the expense of subsidiarity and especially peer-to-peer relationships, is that Schelling points and related concepts that solve the *quis custodiet* problem were only recently explicated. David Friedman's essay, *e.g.*, expresses what seemingly should but doesn't appear to be a commonplace idea.

Without this non-obvious concept from game theory, I think it is difficult for the analyst to explain how conflicts are resolved, except because "sovereign" decisions are made within a delegation relationship.

9:38 AM

nick said...

Alas, a bullet or matchete is far more convincing than a Schelling point. What set of rights form the Schelling point(s) depends very much on who has the bigger gun and who is more willing to wield it -- which eventually comes to depend on institutions and in particular on war and procedural law. So 50/50 may be a Schelling point, but given a bit more assymytry in convingnness or coerciion, so is 90/10, as in the guy with the gun or the keys to heaven gets 10% of all you make every year -- a Schelling point so common it has a name: "tithe". The Spanish king claimed 20% of all gold found in the New World at the time of Columbus. Due to smuggling, this number was later reduced to 10%, then 5% -- all nice Schelling points, each half the previous. The mix between royal ability to enforce its law, smugglers' ability to evade it, and Lafferian consideration, and probably many other considerations, rounded to a nearby Schelling point, determined the tax rate.

Despite Friedman's complaint that tax and tribute is unprincipally "open-ended", Schelling points involving tax and tribute have been the overwhelming norm in history. Despite Friedman's notion that we humans object so much to coercion, nobody knows of even a single person out the tens of billions of human beings who have lived long lives on this planet who have ever gone through them without being either the "giving" or "receiving" end of substantial coercion. The 50/50 split, or to use the far more common phrase Friedman avoids, "equality under the law", is the product of an advanced legal system, imposed by coercion -- it is nowhere remotely close to the direct outcome of a negotiation in the war of all against all.

1:39 PM

sebastian said...

Nevertheless one can still find many examples of fine-grained subsidiarity, down to "stand your ground" laws, citizen's arrest, and those shopping mall jail cells.

...and juries, grand or otherwise, yes?

Fascinating essay, many thanks for sharing. Did not know that about the UCC. That really opens a can of worms.

So would you say that the states of the U.S. are peers voluntarily acting as subsidiaries to DC or subsidiaries acting as peers?

9:05 PM

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